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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,698	01/12/2001	Steven Robert Mayle	MAY1023-012	2647

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EXAMINER	
NGUYEN, CHI Q	
ART UNIT	PAPER NUMBER

3635

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/759,698	MAYLE, STEVEN ROBERT
	Examiner	Art Unit
	Chi Q Nguyen	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 December 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1, 3-12 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 - 5) Claim(s) _____ is/are allowed.
 - 6) Claim(s) 1 and 3-12 is/are rejected.
 - 7) Claim(s) _____ is/are objected to.
 - 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 January 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

This office action is response to the applicant's amendment filed on 12/13/02.

Information Disclosure Statement

The information disclosure statement filed 12/12/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hatmaker (US 3,871,145).

Hatmaker discloses a flashing for pitch pocket corner comprising a base portion 10 having openings in between, a top portion 11 connecting to the base portion 10 along opening in base portion, a break in 23' base and top portions is aligned and separating into first and second portions 13, a base flap portion denoted as "a" (see attached figures 3, 5) interposed between first and second of base portions 13, and extends from a bottom edge of top portion 10, the break 23' in the top portion separating a first portion

B (attached fig. 5) of the top portion from a second portion of the top portion, a overlapping seam 23.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 4, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hatmaker (US 3,871,145) in view of Gentry (US 4,625,469).
Hatmaker discloses the structural elements for the flashing for pitch pocket as stated paragraph 2.

Hatmaker does not disclose expressly the base and top portions are welded to the second portions of the base portions and top portion, and the top portion is cone-shaped. Gentry teaches replacement flat roof insulation cover having a flexible membrane or boot including a base portion 60 and top portion 58 and having a cone-shaped (see figs. 9a, 9b). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify and combine Hatmaker' invention with Gentry's teaching for a cone-shaped boot. The motivation for doing so would have been to provide more convenience for installers when they need for covering pipes or other applications with have the similar shape requirement.

Hatmaker and Gentry disclose the structural elements for covering protrusion a roof except for the base and top portions are welded together, examiner considers it is a

method of forming a device and not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Response to Arguments

5. Applicant's arguments filed 12/13/02 that the prior art patented to Hatmaker could not be adjustable in order to fit protrusions of various size and the combination of Hatmaker and Gentry fail to disclose an adjustable sealing apparatus that may be used to cover and seal roof projections of various size have been fully considered but they are not persuasive. Examiner does not agree with the applicant's argument because the structural element 12, which including barbs 52 and the pocket 50 could be adjustable for tighten the protrusions in certain degrees, and also the break in 23', which including a series of holes for fasteners (rivets, etc.) for securing the two portions, therefore the adjustability could be done by moving the seam 23 toward or backward to fit various size of protrusions.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Monday-Thursday (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Chi Nguyen
CQN
2/20/03



Carl D. Friedman
Supervisory Patent Examiner
Group 3600